

# Exhibit “L”

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND  
COMPOUNDING PHARMACY,  
INC. PRODUCTS LIABILITY      MDL No. 2419  
LITIGATION

Master Dkt:  
1:13-md-02419-RWZ

~~~~~  
THIS DOCUMENT RELATES  
TO:

All Actions

~~~~~  
VIDEOTAPED DEPOSITION OF  
JOHN W. CULCLASURE, M.D.

9:05 a.m.  
March 23, 2015

Suite 1100  
315 Deaderick Street  
Nashville, Tennessee

Blanche J. Dugas, RPR, CCR No. B-2290

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21         Daniel Makowski, Videographer  
22         Melissa Howard, paralegal

23  
24  
25

1 you've made a mistake, will you agree to try to fix it  
2 during the deposition?

3 A. Yes.

4 Q. We're going to take breaks. I'm going to  
5 shoot for about every 50 minutes. If you need one  
6 before that, you're welcome to take it. Okay?

7 A. Yes.

8 Q. How many patients of St. Thomas Outpatient  
9 neurological --

10 MR. GIDEON: Neurosurgical.

11 Q. (By Mr. Kinnard) -- Neurosurgical Center  
12 died from meningitis?

13 A. 13, I believe.

14 Q. How many were injured?

15 A. I think 113 got sick.

16 Q. Do you agree that this was a catastrophe?

17 A. Yes.

18 Q. You understand the importance of your  
19 testimony today, don't you?

20 A. Yes.

21 Q. Were you the medical director of this  
22 center?

23 A. Yes.

24 Q. Were you overall in charge of it?

25 A. I'm -- I don't understand the question.

1 Q. Of the center. Were you overall in charge  
2 of it?

3 A. Well, there's a manager, a nurse manager,  
4 and so she was in charge of the day-to-day operations,  
5 and I was -- I'm the medical director.

6 Q. Did she answer to you as the medical  
7 director?

8 A. For clinical issues, not for -- not for  
9 personnel matters or other things along those lines.

10 Q. Okay.

11 A. We would collaborate, I guess, if there was  
12 an issue like that.

13 Q. Let's go over your background, Doctor.  
14 Where were you born?

15 A. Orangeburg, South Carolina.

16 Q. When?

17 A. 1957, January 23rd.

18 Q. And where were you raised?

19 A. About ten miles away in a smaller town.  
20 St. Matthews.

21 Q. Where did you go to high school?

22 A. In Orangeburg. Wade Hampton Academy.

23 Q. What year did you graduate from high  
24 school?

25 A. 1975.

1 A. Yes, sir.

2 Q. Did Howell Allen pay you for the ESIs done  
3 at this center?

4 A. Howell Allen collected the money from the  
5 insurance companies and the patients for the work that  
6 I did, they retained 40 percent of that to cover my  
7 overhead and expenses, and then paid me the remaining  
8 60 percent.

9 Q. But they would collect money -- Howell  
10 Allen would collect money for ESIs done at this  
11 center; correct?

12 A. For the ones that I did, yes.

13 Q. All right. Did this center pay you some  
14 money as medical director?

15 A. No.

16 Q. Did the center pay you anything for  
17 anything?

18 A. No, sir.

19 Q. So the way you got your money for your work  
20 over there was through Howell Allen; true?

21 A. Yes.

22 Q. You didn't charge the patients personally?

23 A. No. They got a bill from Howell Allen  
24 Clinic.

25 (Exhibit 122 was marked for

1 as you could have gotten MPA like you were getting it  
2 from Pfizer, you would have kept using it?

3 A. Yes.

4 MR. GIDEON: Objection.

5 Q. (By Mr. Kinnard) I want to be certain  
6 about some things in respect to what you did about  
7 this switch to NECC. Is it true you never called a  
8 pharmacist about this potential switch?

9 A. Yes, that's true.

10 Q. Is it true you never consulted with any  
11 doctors in your group?

12 A. Yes, that's true.

13 Q. Is it true, other than some brochures that  
14 Ms. Schamberg showed you from NECC, that that's the  
15 only documents you ever saw about this proposed  
16 switch?

17 A. Yes, that's true.

18 Q. You never went to a computer and Googled  
19 NECC, did you?

20 A. I never Googled the name of any  
21 manufacturer or supplier that we got supplies from.

22 Q. The question is did you ever go to a  
23 computer and Google anything about NECC?

24 A. No, sir.

25 Q. Other than these three ladies you told us

1       about, did you ever talk to anybody about NECC before  
2       the catastrophe?

3           A.       No, sir.

4           Q.       How much trouble would it have been,  
5       Doctor, to consult with a qualified pharmacist about  
6       the question of whether what NECC does is safe?

7           A.       I don't know.

8           Q.       Is there anything in writing about the  
9       decision that was made to switch to NECC?

10          A.       If there is something in writing, it would  
11       be from Debra, since she was doing the ordering or  
12       initiating the contact. I would not have made any  
13       notes that I'm aware of.

14          Q.       If it there were any questions about the  
15       quality of steroids at NECC, did you expect Ms.  
16       Schamberg to find that out?

17          A.       No, I expected the FDA and the Tennessee  
18       department of pharmacy and the Massachusetts Board of  
19       Pharmacy to be on top of that.

20          Q.       Did you know, when Ms. Schamberg talked to  
21       you, that NECC was a compounding pharmacy?

22          A.       Yes, sir.

23          Q.       What did you know a compounding pharmacy  
24       was?

25          A.       Compounding pharmacies take raw material

1 Q. Have you seen any of the notes, any  
2 handwritten notes or anything like that?

3 A. I saw them while they were -- I mean, I saw  
4 them at that time. I've not seen them in any of the  
5 materials I've reviewed for the deposition.

6 Q. Do you know if they were kept or destroyed?

7 A. I don't know. I would be surprised if  
8 Debra -- anything would be destroyed. She's pretty  
9 careful about documents.

10 (Exhibit 136 was marked for  
11 identification.)

12 Q. (By Mr. Kinnard) I'm going to mark as  
13 Exhibit 136 STOPNC\_1597, which is a two-page document.  
14 It also includes 1594. It's dated October 3rd, 2012.  
15 You familiar with this letter?

16 A. Yes, I believe so. I think I saw it.

17 Q. Is this a competitor of STOPNC?

18 A. He has another pain practice in town. I --  
19 I don't usually think of it as a competitor. We're  
20 closed. I mean, I'm not -- he's not -- so I don't  
21 compete with him for patients. I mean, we're a closed  
22 center. We don't take outside referrals.

23 Q. Okay. There's a sentence in the first  
24 paragraph where he says, "The medications utilized by  
25 the physicians at Center for Spine, Joint and

1           A.       That's primarily it. I mean, if they -- if  
2       the patient got scheduled and they're with a  
3       particular -- and their diagnoses didn't establish  
4       medical necessity with their insurance company, then  
5       we can do the procedure and not be reimbursed. I  
6       mean, if that's -- I generally ask the billing not to  
7       balance bill patients if there are errors that  
8       occurred because of something that we missed. If I'm  
9       aware of it, I don't want the patients billed.

10          Q.       Do you remember any ESI patients not being  
11       reimbursed for medical necessity reasons?

12          A.       Not specifically. I don't get a report  
13       from the business office about how many are not being  
14       reimbursed because of a problem. That's just not the  
15       data that I get.

16          Q.       So if there were medical necessity issues  
17       that came up, you wouldn't have known about them?

18          A.       Probably. I've asked the billing office if  
19       there is a problem, you know, to let me know if they  
20       need, you know, help with diagnosis codes or anything  
21       like that or that I can help with, but I don't know of  
22       any -- they don't -- I haven't gotten a call about any  
23       specific patients that didn't -- you know, insurance  
24       denied payment for.

25          Q.       What entity handles the billing for STOPNC?

1           A.       It's internal to the practice -- or Howell  
2       Allen.  Excuse me.  The Howell Allen billing office, I  
3       believe, handles them.

4           Q.       A patient who's considering getting an  
5       epidural steroid injection presumably like most  
6       procedures has other options; correct?

7           A.       Yes.

8           Q.       What are the other options that a patient  
9       has in lieu of getting an ESI?

10          A.       Time, analgesics, physical therapy.  Those  
11       would be the main ones.

12          Q.       Who do you mean by time?

13          A.       Just waiting, see if it gets better.

14          Q.       You described the sort of initial consult  
15       you -- that you do with the new patients earlier  
16       today.  And I believe you said, you know, you walk  
17       into the room and the patient's got the blue wristband  
18       and they're in street clothes and you go over things  
19       with them for a few minutes, and then you might leave  
20       that room to go and do a procedure, for example.

21                 When you walk into the room the first time  
22       to meet the new patient, what do you know about that  
23       patient as you walk into their room?

24          A.       Well, I've already picked up the chart and  
25       I look at the chart.  So I see some basic demographic

1 relaxed.

2 Q. Did you feel the same way after your  
3 preparation?

4 A. Yes.

5 Q. And did you talk to Debra Schamberg about  
6 your deposition --

7 A. No.

8 Q. -- in the couple of weeks before it?

9 A. No, other than just, you know, that it was  
10 coming up because she's aware of the scheduling, I had  
11 to be out today.

12 Q. Did you read the transcript of her  
13 deposition?

14 A. No.

15 Q. Do you know who the Saint Thomas Hospital  
16 pharmacist is or was?

17 A. No.

18 Q. Does the name Martin Kelvas mean anything  
19 to you?

20 A. That does -- Marty, I think. That does  
21 sound familiar, Marty Kelvas, I believe.

22 Q. Do you know who he is?

23 A. I wouldn't know him if he walked in here.

24 Q. Do you -- do you have a memory of how the  
25 name come up or how you became familiar with the name?

1

## DISCLOSURE

2

Pursuant to Article 10.B of the Rules  
and Regulations of the Board of Court  
Reporting of the Judicial Council of  
Georgia which states: "Each court reporter  
shall tender a disclosure form at the time  
of the taking of the deposition stating the  
arrangements made for the reporting  
services of the certified court reporter,  
by the certified court reporter, the court  
reporter's employer or the referral source  
for the deposition, with any party to the  
litigation, counsel to the parties, or  
other entity. Such form shall be attached  
to the deposition transcript," I make the  
following disclosure:

10

I am a Georgia Certified Court  
Reporter. I am here as a representative of  
Discovery Litigation Services, LLC.  
Discovery Litigation Services, LLC was  
contacted to provide court reporting  
services for the deposition. Discovery  
Litigation Services, LLC will not be taking  
this deposition under any contract that is  
prohibited by O.C.G.A. 9-11-28(c).

15

Discovery Litigation Services, LLC  
has no contract/agreement to provide  
reporting services with any party to the  
case, any counsel in the case, or any  
reporter or reporting agency from whom a  
referral might have been made to cover this  
deposition.

19

Discovery Litigation Services, LLC  
will charge its usual and customary rates  
to all parties in the case, and a financial  
discount will not be given to any party to  
this litigation.

22

23

Blanche J. Dugas  
CCR No. B-2290

24

25

1 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3

4 I hereby certify that the foregoing  
5 transcript was reported, as stated in the  
6 caption, and the questions and answers  
7 thereto were reduced to typewriting under  
8 my direction; that the foregoing pages  
9 represent a true, complete, and correct  
10 transcript of the evidence given upon said  
11 hearing, and I further certify that I am  
12 not of kin or counsel to the parties in the  
13 case; am not in the employ of counsel for  
14 any of said parties; nor am I in any way  
15 interested in the result of said case.

16

17 March 31, 2015

18

19

20

21 BLANCHE J. DUGAS, CCR-B-2290

22

23

24

25

1 CAPTION

2

3 The Deposition of JOHN W. CULCLASURE, M.D.,  
4 taken in the matter, on the date, and at the time and  
5 place set out on the title page hereof.

6 It was requested that the deposition be  
7 taken by the reporter and that same be reduced to  
8 typewritten form.

9 It was agreed by and between counsel and  
10 the parties that the Deponent will read and sign the  
11 transcript of said deposition.

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